IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 7579 of 2006(B)

PETITIONER:

S. AJAYAKUMAR, GOVERNMENT CONTRACTOR
LATHA MANDIRAM, PRESENTLY KUNNATH HOUSE,
CHEPRA P.O., KOTTARAKKARA, KOLLAM DISTRICT.

BY ADV. SRI.K.BABU THOMAS

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY THE**
   AGRICULTURAL PRODUCTION COMMISSIONER &
   PRINCIPAL SECRETARY TO THE GOVERNMENT
   SECRETARIAT, TRIVANDRUM.

2. **THRISSUR KOLE LAND DEVELOPMENT AGENCY**
   REP.BY ITS CHAIRMAN & DISTRICT COLLECTOR,
   COLLECTORATE, THRISSUR.

3. **THE CONSTRUCTION ENGINEER, KERALA**
   LAND DEVELOPMENT CORPORATION LTD.,
   NEAR RAMANILAYAM, THRISSUR-20.

BY ADV. SRI.P.N.MOHANAN for R3
BY SR.GOVERNMENT PLEADER SRI. P.K. BABU for R1
BY ADDL.ADVOCATE GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF G.O.(RT) NO.393/2005/AD DTD. 14/03/2005.**
EXT.P2:	**COPY OF COVERING LETTER OF THE AWARDS DTD. 30/06/2005.**
EXT.P3:	**COPY OF ADJUDICATION AWARD UNDER AGREEMENT NO. 43/CE/1998-99 DTD. 29/06/2005.**
EXT.P4:	**COPY OF ADJUDICATION AWARD UNDER AGREEMENT NO. 46/CE/97-98 DTD. 29/06/2005.**
EXT.P5:	**COPY OF ADJUDICATION AWARD UNDER AGREEMENT NO. 15/CE/1998-99 DTD. 29/06/2005.**
EXT.P6;	**COPY OF ADJUDICATION AWARD UNDER AGREEMENT NO. 18/CE/1995-96 DTD. 29/06/2005.**
EXT.P7:	**COPY OF ADJUDICATION AWARD UNDER AGREEMENT NO. 22/CE/1996-97 DTD. 29/06/2005.**
EXT.P8:	**COPY OF LETTER OF THE PUNJAB NATIONAL BANK DTD. 15/02/2006.**
EXT.P9:	**COPY OF SITE INSPECTION NOTES DTD. 26/04/2005.**
EXT.P10:	**COPY OF NOTICE SENT BY THE ADJUDICATION TO THE PARTIES DTD. 27/04/2005.**
EXT.P11:	**COPY OF MINUTES OF ADJUDICATION PROCEEDINGS DTD. 2/05/2005.**
EXT.P11(A):	**COPY OF MINUTES DTD. 3/05/2005.**
EXT.P11(B):	**COPY OF MINUTES DTD. 4/05/2005.**
EXT.P11(C):	**COPY OF MINUTES DTD. 11/05/2005.**
EXT.P11(D):	**COPY OF MINUTES DTD. 12/05/2005.**
EXT.P11(E):	**COPY OF MINUTES DTD. 13/05/2005.`**

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EXT.P12: COPY OF G.O.(RT) NO.1281/06/AD REJECTING AWARDS DTD. 23/09/2006.

EXT.P13: COPY OF REPRESENTATION TO THE HON'MINISTER FOR AGRICULTURE DTD. 4/10/2006.

EXT.P14: COPY OF REPRESENTATION TO THE FIRST RESPONDENT TO PAY THE AMOUNT DTD. 4/10/2006.

EXT.P15: COPY OF CERTIFICATE OF MANAGER, PUNJAB NATIONAL BANK, SHOWING RATE OF INTEREST CHARGED ON THE LOAN AMOUNT DTD. 13/04/2005.

EXT.P16: COPY OF JUDGMENT IN O.P.NO.19895/1999 AND CONNECTED CASES DTD. 4/11/1999.

EXT.P17: COPY OF JUDGMENT IN W.A.2693/1999 AND CONNECTED CASES DTD. 5/01/2000.

EXT.P18: COPY OF THE JUDGMENT IN R.P.NS.34/2007,38/2007,41/2007, 42/2007 AND 125/2007 OF THIS HON.COURT.

EXT.P19: COPY OF G.O.(RT) NO.1281/06/AD REJECTING ADJUDICATION AWARDS.

3RD RESPONDENT'S EXHIBITS:

EXT.R3A: COPY OF THE WORK BILL AND MEMORANDUM OF PAYMENT DTD. 17/07/98.

EXT.R3B: COPY OF THE FINAL BILL IN AGREEMENT NO.46/CE/97-98 DTD. 18/11/97.

EXT.R3C: COPY OF THE FINAL BILL IN AGREEMENT NO.15/CE/98-99 DTD. 15/05/98.

EXT.R3D: COPY OF THE WORK BILL AND MEMORANDUM OF PAYMENT IN AGREEMENT NO.18/CE/95-96 DTD. 25/08/98.

EXT.R3E: COPY OF THE WORK BILL AND MEMORANDUM OF PAYMENT IN AGREEMENT NO.22/CE/96-97 DTD. 22/10/98.

EXT.R3F: COPY OF THE ORDER OF THE GOVT.DTD. 23/09/06.

/TRUE COPY/

Kss

THOTTATHIL B.RADHAKRISHNAN, J

W.P(C).No.7579 OF 2006

Dated this the 28th day of February, 2007

JUDGMENT

The petitioner carried out certain contracts for the Government under the NABARD projects. An adjudicator was appointed as per Ext.P1 by the Government to look into the claims of the petitioner viz-a-viz the Government. The adjudicator came up with certain awards. The Government ultimately took the stand that the awards are not acceptable to it. The matter also led to the filing of writ petitions before this Court which were disposed of, wherein, the question of termination of contract would or would not have been subject matter of consideration. Whatever that be, the Government ultimately issued Ext.P19 Government Order on 23.9.06, wherein, the Government rejected the adjudication reports of the adjudicator subject to the decisions in the writ appeals before the High Court. Thereafter, it appears that the petitioner moved the Division Bench for further clarification.

That resulted in Ext.P18 order of the Division Bench making it clear that the observations of the Division Bench were only for the purpose of the disposal of the writ appeals and would not stand in the way of parties to pursue the matter on merits.

2. On the claims raised by the petitioner in the light of Ext.P18 order of the Division Bench of this Court, it is appropriate that the Government afford the petitioner an opportunity of hearing regarding the sustainability of the awards of the adjudicator and take a decision as to whether it would stand by the awards of the adjudicator, at least as far as the payments that are to be made to the petitioner are concerned. The Government shall do this by affording the petitioner an opportunity of pre-decisional hearing within 45 days from now. It is clarified that the decision shall be taken untrammelled by anything stated in this judgment. It is to be ensured that if the decision is against the interest of the petitioner, the reasons are also stated therein so that the petitioner can work

out appropriate remedies before the competent authorities/ courts. The final decision, after hearing as aforedirected, shall follow within a period of one month from the date of hearing.

The writ petition is disposed of with the above directions.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.